



POLICE DEPARTMENT

May 5, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Kevin Cox
Tax Registry No. 938279
Brooklyn Court Section
Disciplinary Case No. 84137/08

The above-named member of the Department appeared before me on February 2, 2010, charged with the following:

1. Said Police Officer Kevin Cox, assigned to the 71 Precinct on or about June 18, 2007 at a location known to this Department, in Kings County, while on duty, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of the service, did fail and neglect to immediately notify his Commanding Officer and or the Internal Affairs Bureau action desk, as required. (*As amended*)

P.G. 207-21, Pages 1 and 2 -- ALLEGATIONS OF CORRUPTION AND
SERIOUS MISCONDUCT AGAINST MEMBER
OF THE SERVICE

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and the Respondent was represented by John P. Tynan, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that the Respondent, assigned to the 71 Precinct, was on duty and in uniform on June 18, 2007, assigned to patrol duties on the 1600 hours to 2400 hours tour partnered with Police Officer Denisse Klass. At 2310 hours, the Respondent and Klass responded to a radio transmission regarding a past domestic assault at [REDACTED], Brooklyn. They arrived at [REDACTED] and spoke to the complainant, [REDACTED] ([REDACTED]).

[REDACTED] told the Respondent and Klass that a male who was a uniformed member of the service (MOS) was present when she was assaulted by her boyfriend, [REDACTED], and that the two men had left [REDACTED] together. Sergeant (now Lieutenant) Stephen Espinoza arrived at [REDACTED] at 2322 hours. The Respondent reported [REDACTED]'s allegation that a MOS had been present with her boyfriend when she was assaulted by her boyfriend to the Internal Affairs Bureau's (IAB) Action Desk at 0052 hours on June 19, 2007.

The Department's Case

The Department called Sergeant Daniel Mangome and Lieutenant Stephen Espinoza as witnesses.

Sergeant Daniel Mangome

Sergeant Daniel Mangome, assigned to the Organized Crime Control Bureau (OCCB) Investigations Unit, recalled that on July 18, 2007, he was assigned to investigate an allegation that a MOS assigned to OCCB had been present when [REDACTED] was assaulted by [REDACTED] on June 18, 2007 at [REDACTED] Street. Mangome interviewed [REDACTED] who told him that during his altercation with [REDACTED] on June 18, 2007, at [REDACTED] Street, a man had been present but that this man was not a the New York City Police Department detective. Mangome interviewed Detective Dion Edwards who told him that [REDACTED] was an informant who had provided information to him. Mangome interviewed Detective Fitzgerald who was assigned to investigate [REDACTED]'s allegation that she had been assaulted by [REDACTED] on June 18, 2007 at [REDACTED]. Mangome interviewed [REDACTED] who told him that [REDACTED] had stated to her that the man who was with him was "a cop."

On cross-examination, Mangome confirmed that [REDACTED] had refused to provide the name of the man who had been present with him during his altercation with [REDACTED] on June 18, 2007, and that Detective Edwards had told him that [REDACTED] had refused to be registered as an informant. Mangome confirmed that he was never able to determine whether the man who was present with [REDACTED] when he assaulted [REDACTED] on June 18, 2007, was a MOS. Mangome opined that the Respondent's report to the IAB Action Desk at 0052 hours on June 19, 2007, was not timely because the Patrol Guide mandates that an allegation of corruption or serious misconduct involving a MOS be reported immediately. Mangome admitted that he did not examine the IAB Command Log

maintained at the IAB Command Center at 315 Hudson Street to see if any calls had been made to an unrecorded IAB telephone line on June 19, 2007.

Lieutenant Stephen Espinoza

Lieutenant Stephen Espinoza recalled that on June 18, 2007, he was a sergeant assigned as a patrol supervisor at the 71 Precinct. He responded to [REDACTED] because he had the digital camera which was used to take photos of injuries to domestic violence victims. After he arrived at [REDACTED] at 2322 hours, he spoke to [REDACTED], Klass and the Respondent. Neither [REDACTED], nor Klass nor the Respondent told him that a MOS had been present when [REDACTED] was assaulted by her boyfriend

On cross-examination, Espinoza recalled that on June 18, 2007, the Respondent was still "a rookie" who only had "one year knowledge of the Patrol Guide." The Respondent was not suspended regarding this matter.

The Respondent's Case

The Respondent testified on his own behalf.

The Respondent

The Respondent testified that prior to his appointment with the Department, he was a Lance Corporal in U.S. Marine Corp. and worked in the Richmond, Virginia Sheriff's Office.

The Respondent recalled that when he and Klass, who was not his regular partner because he had no steady partner, arrived at [REDACTED], Klass, who was a five-

year veteran and a more experienced officer, took the lead in interviewing [REDACTED], although the Respondent "asked maybe a couple of questions in between the interview that was taking place by Officer Klass."

[REDACTED] told them that she had been punched in the eye by her boyfriend, [REDACTED], and that when [REDACTED] did this "he brought one of your detectives here" with him. When [REDACTED] said "one of your detectives," the Respondent concluded that she meant a uniformed MOS. The Respondent was asked, "Upon hearing that, what, if anything, did you immediately do?" He answered that since he "was not the interviewing officer" he "was hoping the next step was for my partner to call for the supervisor to come on the scene." Instead, he heard Klass tell [REDACTED], "I don't want to hear about that, just tell me what your boyfriend did."

When he heard Klass say this to [REDACTED], the Respondent "went into shock, into tunnel vision" because "to me it was moment of duress when something happens that needs to be reported to a supervisor and I felt like I was shot down" because he was "the junior officer" and he "felt like I couldn't give an input right there, because we are taught not to argue with another officer on the scene of anything" because "that shows a breakdown of us being police" when an officer argues with another officer in the presence of a civilian.

The Respondent was asked, "At that point, did you attempt to separate you and Officer Klass from Ms. [REDACTED]?" He answered, "No, sir." He was asked, "Why not?" He responded, "As I said, I went into a moment of tunnel vision. The only thing I reflected on at that moment was my training, what I was trained when I was in the Police Academy. The best speech I got from police training was the chief of IAB himself

coming into the auditorium and saying if at any moment you feel like your back is against the wall when an incident occurs and needs to be reported make that call and that's the tunnel vision I went into at that moment where I felt like I just have to make this call." He was asked, "Were you able to make the call from [REDACTED]?" He answered, "No, Sir." When he was asked, "Why not?" he asserted that, "There were no opportunities to make the call."

He recalled that about five to seven minutes after [REDACTED] told Klass that when [REDACTED] punched her "he brought one of your detectives here" with him, Sergeant Espinoza arrived at [REDACTED]. They had called Sergeant Espinoza to the scene because he had the camera which they needed to take photos of the injury to [REDACTED]. The Respondent was asked, "Did you have the opportunity, once the Sergeant arrived at the scene, to tell him about your concern about the statement made by Ms. [REDACTED]?" When the Respondent answered, "No," he was asked, "Why didn't you do that at that point?" He answered, "At that point my mind was already made up to make the call to IAB. I didn't see anything else. I got a moment of tunnel vision." He was also asked, "What, if any, decision did you make about informing somebody from the 71st Precinct about what you were going to do? Why did you not inform anyone from the 71st Precinct about what had just happened?" He answered, "Because I was afraid I would be a precinct rat, which unfortunately I am now, because everybody knows I made the call which was allegedly supposed to be confidential" since he made the call "to the IAB in regards to corruption."

After photographs of [REDACTED] were taken, Sergeant Espinoza took these photos and left. Since it was the end of their tour, he and Klass returned to the stationhouse. He then

went to the locker room, changed his clothes, went outside, entered his personal vehicle and immediately called the IAB phone number that "the Chief of IAB gave me in the Police Academy." The IAB officer who answered his call told him to call back on a different line. Later, he learned that the number he had called was not a recorded phone line and that is why the officer "made me call back on a recorded line." When he called back, the same IAB officer answered. He reported to this officer what [REDACTED] had stated to Klass and him.

On cross-examination, the Respondent acknowledged that he heard [REDACTED] say that her boyfriend had assaulted her in the presence of a New York City police detective and that her boyfriend had fled the scene with this man. When he was asked, "What was the reason you didn't tell the Sergeant?" he replied, "Because I went through a moment of tunnel vision where I decided I'm not going to raise - - I'm not going to make war. I just started patrol. I'm not going to go against what is happening. I was going to do the right thing." When he was asked, "What do you mean by what's happening, that you were not going to go against what's happening?" He answered, "I was new to patrol at that time. I heard something. Just as the chief of IAB said to me, I may come across it, and when I do come across it, what to do. I went through that moment of, I'm going to make that phone call as soon I get the opportunity to do it".

When he was asked, "Why didn't you tell Sergeant Espinoza? Why didn't you take him aside and say, Sergeant, I need to talk to you for a second, and tell him what you heard Ms. [REDACTED] say about the detective?" He replied, "Because at the time, the other officer was there and I would have been the bad apple in the precinct. I'm ratting out a

cop.” He asserted that if Klass had not been there, he would have reported what [REDACTED] had said about the detective to Sergeant Espinoza.

FINDINGS & ANALYSIS

It is charged that the Respondent, while on duty, upon receiving an allegation of corruption or serious misconduct involving a member of the service, failed and neglected to immediately notify his Commanding Officer and or the Internal Affairs Bureau action desk.

In his testimony at this trial, the Respondent acknowledged that, before Sergeant Espinoza arrived at [REDACTED], [REDACTED] told him and Klass that her boyfriend had assaulted her in the presence of a New York City police detective and that her boyfriend had fled the scene with this man. [REDACTED]’s allegation that the “detective” not only allowed her to be assaulted in his presence but also fled the scene with the perpetrator constituted an allegation of serious misconduct against someone who was possibly a uniformed member of the Department.

Although the Respondent asserted that when Espinoza arrived he had wanted to tell him what [REDACTED] had said about the “detective,” he admitted that he did not say anything to Espinoza. The Respondent’s explanation that was uncomfortable speaking about the “detective” to Espinoza in front of Klass because he did not want to be labeled “a rat” does not excuse his failure to immediately notify his supervisor at the scene about [REDACTED]’s allegation so that Espinoza could notify the Commanding Officer.

The Respondent offered no reasonable explanation to support his claim that at the scene it had been impossible for him to arrange a way to tell Espinoza about [REDACTED]’s

allegation regarding the “detective” without Klass hearing what he was saying. The Respondent’s claim that he really wanted to tell Espinoza about what [REDACTED] had said about the “detective” is belied by the fact that he admitted that after he and Klass parted company at the end of their tour, he did not try to contact Espinoza to let him know that they had deceived him in that they had not told him everything [REDACTED] had told them.

Finally, it is clear that the Respondent did not immediately call IAB to report [REDACTED]’s allegation. He admitted that, even though Klass was no longer with him, he did not call IAB until after he had changed his clothes in the men’s locker room, left the stationhouse and entered his car.

The Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of failing to immediately notify his Commanding Officer and/or the Internal Affairs Bureau action desk that he had received an allegation of serious misconduct involving a male who purportedly was a member of the service. This same charge was also brought against Police Officer Denisse Klass who pleaded guilty and forfeited 15 vacation days as a penalty.¹


¹ Under Case No. 84088/08.

The Assistant Department Advocate (the Advocate) recommended that the Respondent be required to forfeit ten vacation days as a penalty.

The Advocate does not dispute that about 80 minutes after the Respondent learned that a member of the service had allegedly been involved in this incident he reported this information to IAB. The Advocate offered no evidence that the Respondent's relatively brief delay in reporting to IAB had any adverse impact on the Department or on IAB's investigation into the identity of the member who may have been involved in this incident.

Taking this factor into consideration, as well as the fact that the Respondent has no prior disciplinary record, I recommend that the Respondent forfeit five vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED
JUN 01 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEVIN COX
TAX REGISTRY NO. 938279
DISCIPLINARY CASE NO. 84137/08

The Respondent received an overall rating of 3.0 on his 2009 performance evaluation, 3.0 on his 2008 evaluation, and 3.0 on his 2007 evaluation. He has no medals. [REDACTED] He has no prior disciplinary record.

On May 8, 2007, he was placed on entry level probation monitoring which ended on July 10, 2007.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials